

STATE OF TENNESSEE
OFFICE OF THE
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February 25, 2004

Opinion No. 04-031

Municipalities — Cash Payments to Officials in Lieu of Paying Life or Health Insurance Premium

QUESTIONS

1. May a municipality make cash payments to a city council member or municipal official in lieu of paying premiums for employee life or health insurance?
2. If yes, would these payments be considered additional “compensation.”

OPINIONS

1. A municipality has no authority to pay an official cash in lieu of paying an insurance premium.
2. We do not answer this question because we answer the first in the negative.

ANALYSIS

Municipal corporations are created by state law. Local governments have the powers and authority that the General Assembly gives them. *Southern Constructors, Inc. v. Loudon County Bd. of Educ.*, 58 S.W.3d 706, 710-12 (Tenn. 2001). Statutes prescribe a municipal corporation’s powers and duties. *E.g.*, Tenn. Code Ann. § 6-2-201.

In addition to specific powers, the statutes also may give a municipality the powers that could be legally included in its corporate charter. *E.g.*, Tenn. Code Ann. § 6-19-201(33). While the statutes thus provide municipalities with fairly broad powers, the statutes do define those powers. Municipalities do not have inherent power. The municipality’s powers flow from the statute. And so the Tennessee Supreme Court has stated:

[I]t must be taken for settled law, that a municipal corporation possesses and can exercise the following powers and no others: First, those granted in express words; second, those necessarily implied or necessarily incident to the powers expressly granted; third, those absolutely essential to the declared objects and purposes of the

corporation--not simply convenient, but indispensable; fourth, any fair doubt as to the existence of a power is resolved by the courts against the corporation--against the existence of the power.

S. Constructors, 58 S.W.3d at 710. In addition, the exercise of local regulatory authority must be consistent with state law. *See, e.g., S. Ry. Co. v. Knoxville*, 442 S.W.2d 619, 621 (Tenn. 1968).

Municipalities are authorized to provide medical and disability insurance for their employees and officials. Tenn. Code Ann. § 8-27-601. The municipal governing body decides whether to offer the coverage, what percentage¹ of the premium the municipality will pay, and what percentage, if any, the official or employee will pay. Tenn. Code Ann. § 8-27-604. Officials and employees may accept or reject the coverage. Tenn. Code Ann. § 8-27-603.

In the situation you have presented, the official, presumably, has rejected the coverage, but the municipality pays the official a cash amount instead of paying the premium. We have found no statute that allows municipal corporations to pay a city council member cash instead of paying an insurance premium. In addition, because the official has rejected the coverage, there is no premium to pay. Hence, the municipality has no legal basis to pay cash to the city official in lieu of paying a life or health insurance premium.

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Requested by:

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¹ Municipalities may pay up to 100% of the premium. Tenn. Code Ann. § 8-27-604.